

REMARKS

Claims 1-4, 7, 9, 10, 12-14, 17, 19-23, 26, and 28 are currently pending in this application. Claims 20-23, 26, and 28 are canceled.

REJECTIONS UNDER § 102 AND § 103

Claims 1, 10, and 20 were rejected under § 103(a) as being unpatentable over *Vigil et al.* (U.S. Patent No. 5,746,716) (hereinafter “*Vigil* ‘716”). Applicants respectfully request reconsideration of this rejection. As an initial matter, Applicants do not concede that *Vigil* ‘716 can properly be applied in a § 103(a) rejection against the claims in this application. However, Applicants note that a counterpart EP application to *Vigil* ‘716 was published as EP 0753322, which is being submitted in an IDS accompanying this response.

Independent claims 1 and 10 recite dispensers “consisting only of dispensers positioned in a single plane.” An example of this feature is demonstrated in the embodiment shown in FIG. 2 of the present application, where the dispensers 20 are all positioned in only a single plane 19.

As the Office Action points out, “[c]laims 1, 10, 20 differ from *Vigil* in calling for the dispensers to be provided in a single plane only.”¹ However, the Office Action maintains that the inventions of claims 1, 10, and 20 would have been obvious for the following reasons (underlining added):²

plane only. At the time the invention was made, it would have been an obvious matter of design choice to provide the dispensers in a single plane. Applicant has not disclosed that having the dispensers located in a single plane serves any advantage or particular purpose or solves a stated problem. Furthermore, one of ordinary skill would expect the device of *Vigil* and applicant’s invention to perform equally well with dispensers located in a single or in multiple planes because both configurations treat a localized region of the vessel wall. Therefore, it would have

Applicants respectfully submit that having dispensers “consisting only of dispensers positioned in a single plane” is not merely a matter of design choice. Such dispensers perform

¹ Office Action (Dec. 31, 2007), pg. 3, at ¶ 3.

² *Id.*

differently than dispensers located on multiple planes. As explained in the Background section of the present application, the use of devices with expanding members and penetrating dispensers can cause tissue injury to the vessel wall (page 2, lns. 21-30). This tissue injury can cause inflammation, which may be one of the contributing factors in vessel restenosis. Thus, one of the problems addressed by the inventions of claims 1 and 10 is how to arrange the penetrating dispensers in such a way that an adequate amount of medication is delivered into the vessel wall at a precise location, but also so that the amount of tissue damage caused by the penetrating dispensers is reduced. The inventions of claims 1 and 10 address this problem by arranging the dispensers so that they are positioned in only a single plane, thus allowing more precise targeting to a specific location of the vessel wall that requires treatment.

As the Office Action points out, the device of *Vigil '716* does not have dispensers positioned in only a single plane (see FIG. 2, for example). Further, there is nothing in *Vigil '716* that would prompt a person of ordinary skill in the art to arrange the dispensers in the manner recited by claims 1 and 10.

Various other dependent claims in this application were rejected under § 103(a) as being unpatentable over *Vigil '716* in view of *Rammner* (WO 94/23787), or *Vigil '716* in view of *Goldberg et al.* (U.S. Patent No. 5,480,975), or *Vigil '716* in view of *Casscells et al.* (WO 92/11872), or *Vigil '716* in view of *Nabels et al.* (U.S. Patent No. 5,328,470).

Applicants respectfully submit that none of these secondary references disclose dispensers “consisting only of dispensers positioned in a single plane,” as recited by claims 1 and 10. Therefore, these secondary references do not cure the above-mentioned deficiencies of *Vigil '716*. Further, there is nothing in any of these secondary references that would prompt a person of ordinary skill in the art to arrange the dispensers in the manner recited by claims 1 and 10.

For at least these reasons, Applicants respectfully submit that claims 1 and 10, and the claims that depend therefrom, are patentable over the references cited in the rejection. Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

Applicants respectfully submit that the present application is in condition for allowance. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of this application.

The Commissioner is authorized to charge all required fees, fees under § 1.17, or all required extension of time fees, or to credit any overpayment to Deposit Account No. 11-0600 (Kenyon & Kenyon LLP).

Respectfully submitted,

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